No. 85-693

In The
Supreme Court of the United States
October Term 1985

ASAHI METAL INDUSTRY CO., LTD.,
Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST),
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

RESPONDENT'S BRIEF

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SUBSIDIARIES AND AFFILIATES OF RESPONDENT

Cheng Shin Rubber Industrial Co., Ltd. is the parent company of Cheng Shin Tire USA, Inc., a California corporation, involved in marketing of the products of the parent company in the United States. Respondent is not

aware of the affiliates and subsidiaries of the petitioner if any.

STATEMENT OF THE CASE

This products liability action arises out of a motorcycle accident that occurred in Solano County, California, in 1978. One California resident was killed and another was severely injured when a sudden loss of air in the rear tire of the plaintiff's motorcycle caused him to lose control and fall in front of a truck and trailer rig. Plaintiff, alleging that the motorcycle tire, tube and sealant were defective, filed suit against, *inter alia,* Cheng Shin Rubber Industrial Company, Ltd. (Cheng Shin), the manufacturer of the tire tube, and Cheng Shin Tire USA, Inc., a California corporation (Cheng Shin USA). (Appendix to Petition for Writ of Certiorari ("Pet. App.") C-1.)

Cheng Shin is a Taiwanese corporation that manufactures tire tubes. Cheng Shin purchases tire tube valves from component part manufacturers and incorporates them into tire tubes which are marketed throughout the world. Cheng Shin distributes a substantial number of its tire tubes throughout the United States. Approximately 20 per cent of its sales in the United States are made in California. (Pet. App. C-1, 2.)

Asahi Metal Industries, Company Ltd. (Asahi) is a major Japanese manufacturer of tire tube valves. Asahi sold 1,350,000 valves to Cheng Shin between 1978 and 1982, and has done business with Cheng Shin for 10 years. (Pet. App. C-2.) All sales of tire valve assemblies to Cheng

Shin occurred in Taiwan. The valves were shipped from Asahi in Japan to Cheng Shin in Taiwan. (Pet. App. B-2.) Asahi had actual knowledge at the time of sale that Cheng Shin would market its tire tubes with Asahi's valve stems in the United States and California. (Pet. App. C-10, fn. 4.)

Cheng Shin is not Asahi's exclusive purchaser of tire tube valves. Other purchasers include Honda, Bridgestone, Kenda, Yokohama and I.R.C., all of whom market in California. In February and March of 1983, two samplings of tire tubes were made at two different California businesses. The February sampling found nearly 250 motorcycle tire tubes with valves manufactured by Asahi. The March sampling disclosed that, of 97 tire tubes inspected, 21 (or 22 per cent) had valves manufactured by Asahi. (Pet. App. C-2, fn. 1.)

Subsequent to plaintiff's filing of this suit, numerous cross complaints were filed, including one by Cheng Shin seeking indemnity against Asahi. Cheng Shin USA also filed a cross complaint which has not yet been served. Additionally, the retailer, Sterling May Company, filed a cross complaint and ultimately a new action which apparently has not been served yet, pending the outcome of this matter.

Cheng Shin's cross complaint was properly served on Asahi in Japan. Asahi then moved to quash service of the summons and complaint which was denied by the trial court. A Writ of Mandate was sought and obtained from the California Court of Appeals ordering the trial court to quash service of the summons and complaint. Cheng Shin

then filed a petition for hearing in the Supreme Court of California which was granted. The Supreme Court of California reversed the ruling of the Court of Appeals. This had the effect of reinstating the original ruling of the trial court denying the motion to quash service of the summons and complaint. In making its determination, the Supreme Court of California cited and followed the precedent established by this Court in *International Shoe Company v. Washington,* 326 U.S. 310 (1945), and its progeny. Specifically, the Court found that Asahi's conduct and activities were sufficient to satisfy minimum contacts criteria and that it was fair and reasonable to subject it to California jurisdiction. (Pet. App. C-17, 18.)

SUMMARY OF ARGUMENT

Jurisdiction over non-residents is determined by general principles imposed by Due Process considerations. These principles require that the defendant have "minimum contacts" with the forum, such that ' traditional notions of fair play and substantial justice" are not offended. The defendant must "purposefully avail itself of the benefits and protections" of the laws of the forum. This may be satisfied by the defendant *indirectly* serving the forum marketplace by delivering its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum.

Satisfaction of Due Process criteria depends on whether various circumstances are present in the particular facts, focusing on the relationship between the defendant, the forum and the litigation.

In this case, Asahi's conduct satisfies minimum contact requirements, and jurisdiction over petitioner is proper. Asahi could reasonably anticipate being sued in California, since they had knowledge that Cheng Shin was incorporating Asahi's valve into its own product and selling the product to California. Twenty per cent of the Cheng Shin tire valves sold in the United States were destined for California. Over a five year period, Asahi sold 1.35 million valves to Cheng Shin. Further, Asahi sold valves to several other worldwide marketers such as Honda, Yokohama, Bridgestone and Kenda. Asahi knowingly benefitted economically from the systematic and continued sales of its component parts in California by these manufacturers. It knowingly benefitted from the direct marketing efforts of manufacturers utilizing its product, which is manufactured for the sole purpose of sale as a component part. It must be pointed out that as a producer of component parts, the very existence of its business depends on the efforts of others to directly deal with the marketplace. The fact that Asahi's contact with the market is indirect should not insulate it from jurisdiction in the forum it serves indirectly.

Petitioner argues that the California Supreme Court improperly found jurisdiction based on mere foreseeability by Asahi that its product might end up in California. Instead, the Court found that the stream of commerce theory *was* applicable because there was "awareness" by Asahi that it was indirectly serving the markets of California and the United States, rather than mere foreseeability. It is clear that Asahi had actual knowledge that it was benefitting from the sale of its product by Cheng Shin and others in California. Actual knowledge goes far beyond

"mere foreseeability" in that it constitutes a certainty, rather than a potential, a possibility or a likelihood. Therefore, the California Supreme Court was consistent with *World-Wide Volkswagen* in holding that the requisite standards under Due Process analysis were met and that jurisdiction over Asahi was proper.

Further, it is fair and reasonable for petitioner to be subjected to California jurisdiction. The California Supreme Court found that jurisdiction over petitioner was fair and reasonable because of its interest in protecting its consumers, its interest in the orderly administration in avoiding the possibility of multiple litigation and inconsistent verdicts. Such matters of state interest are valid when weighed with the comparative difficulty and inconvenience residents and domestic businesses would incur if the only available remedy lies in a foreign court.

Petitioner purposefully availed itself of the protection and benefits of California law by taking advantage of the California marketplace with actual knowledge of the destination of its products. By the very nature of its role as a component supplier, Asahi could only reap profits from the California market indirectly, and through the direct efforts of others. Indirect dealing with the forum with this knowledge does not permit petitioner to shield itself from jurisdiction.

Finally, the domestic manufacturer, already struggling to compete with foreign companies, will suffer by having to bear the financial burden involved with products liability litigation for defective component parts if the responsible foreign manufacturer cannot be reached. Extending jurisdiction to foreign manufacturers of component

parts will not significantly impact international trade and relations, because it is fair and reasonable to expect those whose products injure others to answer to those injured thereby.

ARGUMENT

I

DUE PROCESS REQUIREMENTS HAVE BEEN MET ALLOWING CALIFORNIA TO PROPERLY EXERCISE PERSONAL JURISDICTION OVER THE PETITIONER

A. The Governing Standards of In Personam Jurisdiction Have Been Established

Over 40 years ago this Court established a two-pronged test to determine whether personal jurisdiction may be properly exercised over a defendant. First, due process requires that the defendant have certain minimum contacts with the forum so as not to "offend 'traditional notions of fair play and substantial justice.'" (*International Shoe, supra,* at 316, quoting *Milliken v. Meyer,* 311 U.S. 457, 463 (1940).)

The minimum contacts standard is satisfied where the defendant has "purposefully availed itself of the privilege of conducting activities within the forum state, thus evoking the benefits and protections of its laws." (*Hanson v. Denckla,* 357 U.S. 235, 253 (1958)). This requirement is satisfied where the manufacturer directly *or indirectly* serves the forum marketplace by delivering its products into the stream of commerce with the expectation that they

will be purchased by consumers in the forum. (*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-298 (1980).)

Second, due process mandates that "the relationship between the defendant and the forum must be such that it is 'reasonable . . . to require the corporation to defend the particular suit which is brought there.'" (*World-Wide Volkswagen, supra*, at 292 citing *International Shoe, supra*, at 317.) It is essential that in all cases, "the 'quality and nature' of the defendant's activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that state." (*Kulko v. Superior Court*, 436 U.S. 84, 92. (1978).) Thus, a limitation is imposed upon state-exercise of jurisdiction "in its role as a guarantor against inconvenient litigation. . . ." (*World-Wide Volkswagen, supra*, at 292.)

However, the due process limitation has been substantially relaxed over the years in light of the developments in modern transportation and communication which have greatly reduced the defendant's burden of defending in a state where it engages in an economic activity (*McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957)). Moreover, these historical developments "have only accelerated in the generation since [*McGee*] was decided." (*World-Wide Volkswagen, supra*, at 293.)

Ultimately, the determination of whether due process standards have been satisfied must be decided on a case by case basis. (*Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 445 (1952).) The standards for making such a determination are:

> ". . . not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present." (*Kulko, supra*, at 92.)

The focus, therefore, is on "the relationship among the defendant, the forum, and litigation . . . [which becomes] the central concern of the inquiry to personal jurisdiction" (*Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). As a result, an out-of-state defendant is subject to the jurisdiction of the forum state when he "purposefully directed" his activities at residents of the forum, (*Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984)) through indirect efforts of the manufacturer to deliver his products into the stream of commerce, (*World-Wide Volkswagen, supra*, at 297-298), and the litigation results from the alleged injuries that "arise out of or relate to" those activities, *Helicopteros Nationales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984), *Burger King Corp. v. Rudzewicz*, 471 U.S. —; 85 L.Ed.2d 528, 541; 105 S.Ct. 2174 (1985).

Finally, this Court has affirmed the application of these standards to products liability cases (*World-Wide Volkswagen, supra*, at 291). It is with these principles in mind that the determination of whether petitioner is subject to California jurisdiction can be made.

B. Petitioner Has Sufficient Minimum Contacts to Be Properly Subject to California Jurisdiction

The minimum contacts standards require that the defendant should reasonably anticipate being haled into court in that jurisdiction (*World-Wide Volkswagen, supra*, at 297). This may be satisfied where a corporation de-

livers its products into the stream of commerce (*Id.*, at 297-298). Even though petitioner had no direct contacts with California, its indirect activities were sufficient for it to be subject to California jurisdiction (*Id.*, at 297).

1. Petitioner Could Reasonably Anticipate Being Haled Into Court in California

In order to find the minimum contacts necessary to exercise personal jurisdiction over a defendant, the defendant's activities must be sufficient such that it should reasonably be able to anticipate being haled into court in the forum (*Id.*, at 297). This "reasonable anticipation" concept is a step beyond *mere* foreseeability, as this Court has explained in *World-Wide Volkswagen:*

> "[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." (*World-Wide Volkswagen, supra,* at 297, citing *Kulko v. Superior Court, supra,* at 97-98, and *Shaffer v. Heitner, supra* at 216.)

Petitioner argues that the California Supreme Court rested its finding of minimum contacts on *mere* foreseeability,[1] by assuming that the Court used the term "awareness" to mean the same as "foreseeability"[2] when the Court stated:

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[1] Petitioner's Brief, p. 22.

[2] " . . . assuming . . . that the awareness of Asahi amounts to the same thing as foreseeability," Petitioner's Brief, p. 23.

> ". . . the minimum contacts requirement is satisfied where, as here, the manufacturer is aware that a substantial number of products will be sold in the forum state." (*Asahi Metal Industry Company, Ltd. v. Superior Court,* 39 Cal.3d 35, 51 (1985).)[3]

It is respectfully submitted that the California Supreme Court's use of the word "awareness" was not unintentional. Quite to the contrary, the word "awareness" was used specifically in order to differentiate the situation here from the facts in *World-Wide Volkswagen.* "Awareness" is the equivalent of knowledge or actual notice of an act, whereas "foreseeability" merely indicates a potential or a likelihood that an event may occur. The California Supreme Court indicated that "mere foreseeability" was surpassed because petitioner's actual knowledge and activities regarding its products in the forum were sufficient such that it could, or should, reasonably anticipate being haled into court in California.

A corporation can reasonably anticipate being sued in the forum state when its activities and conduct are such that it "purposefully avails itself of the privileges of conducting activities within the forum state." (*World-Wide Volkswagen, supra,* at 295, citing *Hanson v. Denckla, supra,* at 253.)[4] Thus, where the corporation has a reason-

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[3] *See* Pet. App. C-15.

[4] In *World-Wide Volkswagen v. Woodson,* these factors were applied to an automobile retailer and its wholesale distributor whose businesses were limited to the states of New York, New Jersey and Connecticut. The manufacturer, Audi, did not seek review in this Court.

able expectation that its product will be purchased in the forum state, it is amenable to the forum state's jurisdiction. (*Id.*, at 298, citing *Gray v. American Radiator and Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961).)[5] Applying the foreseeability concept as accepted by this Court to the facts of this case, it is clear that petitioner should have reasonably anticipated being haled into court in California.

Here, petitioner is a manufacturer of component parts. Consequently, it initiates the chain of commerce ending with the sale of its component product to the consumer. Petitioner is dependent on the worldwide marketplace for the sale and use of its product. (*See, Rockwell International Corp. v. Costruzioni Aeronauticho Giovanni Agusta*, 553 F.Supp. 328, 332 (E.D. PA 1982), quoting *Developments—Jurisdiction*, 73 Harv.L.Rev. 909, 929 (1960).) Thus, a distinction is to be made between retailers, such as Seaway in the *World-Wide Volkswagen* case, who conduct their businesses in limited markets, and the manufacturer, who knowingly derives economic benefit from a much broader market.[6] This is certainly true where the manufacturer has actual knowledge that its products are sold in the forum.

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[5] Accord, *Nelson v. Park Ind., Inc.*, 717 F.2d 1120 (7th Cir. 1983); *Hedrick v. Daiko Shoji Co., Ltd.*, 715 F.2d 1355 (9th Cir. 1983); *United States v. Toyota*, 561 F.Supp. 354 (C.D. CA 1983); *Rockwell Int'l Corp. v. Costruzioni*, 533 F.Supp. 328 (E.D. PA 1982); *Tedford v. Grumman American Aviation Corp.*, 488 F.Supp. 144 (N.D. MS 1980).

[6] *See*, Section I.B.2., herein, *post*; *Nelson v. Park Ind., Inc.*, *supra*; *Oswalt v. Scripto, Inc.*, 616 F.2d 191, 200 (5th Cir. 1980); *Novinger v. E.I. DuPont de Nemours & Co., Inc.*, 89 F.R.D. 588, 593 (1981).

Furthermore, as a producer of component parts, the very existence of Asahi's business depends on the efforts of others to directly deal with the marketplace. The fact that its contact with the market is indirect should not insulate it from jurisdiction in the forum it serves.

In the five year period from 1978 to 1982, Asahi sold a total of 1.35 million tire tube valves to Cheng Shin. It is uncontroverted that Asahi had *actual knowledge* that its valves were incorporated into Cheng Shin's product sold in the United States and California. Approximately 20 per cent of Cheng Shin's sales in the United States were made in California.[7] Thus, the sale of petitioner's product in California was a known, continuing, repetitive event, not an isolated occurrence.[8]

It is undisputed that petitioner also sold its product to such worldwide marketers as Honda, Yokohama, Bridgestone and Kenda, who sell extensively in the United States and California marketplaces. A sampling and examination of motorcycle tire tubes at a California cycle supply

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[7] *See*, Declaration of Hwally Chen, incorporated in several of the various briefs in the courts below, and duplicated in Appendix A, herein, for the convenience of the Court. *See* also Petitioner's Brief, pp. 5-6, and *Asahi Metal Industry Company, Ltd. v. Superior Court, supra.* (Pet. App. C-2).

[8] In this respect, *World-Wide Volkswagen v. Woodson, supra*, is distinguished from the facts here. The holding in *World-Wide* relies on the lack of any evidence indicating that the presence in Oklahoma of an automobile sold by the defendants therein was anything but an isolated occurrence. (*See*, pp. 289 and 295.) Unlike *World-Wide*, jurisdiction over petitioner is not based upon "one, isolated occurrence and whatever inferences can be drawn therefrom . . ." (p. 295). Rather, jurisdiction here is based upon petitioner's intentional efforts to serve the markets of the United States, including California, with its product.

shop included tubes manufactured by various companies (including Cheng Shin). It revealed the extent of Asahi's presence in the California marketplace. Two hundred forty-six Asahi valves were found incorporated into tubes manufactured by Kenda, not including unopened cases of tire tubes at the shop.[9] A second sampling revealed that of 53 tire tubes manufactured by Cheng Shin, almost one-quarter incorporated valve assemblies manufactured by Asahi.[10]

Regardless of petitioner's argument that sales of valves to Cheng Shin accounted for a minimal percentage of its annual income,[11] the number of valves involved cannot be considered miniscule. It is known that Asahi sold 1,350,000 valves to Cheng Shin between 1978 and 1982. It is known that Asahi sold valves to other major tire tube manufacturers.[12] It is known that 267 Asahi valves were actually found in tubes still on the shelves in a small northern California sampling.[13] If all or some of the Asahi valves in California possess defects, neither the number of

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[9] *See,* Declaration of Kenneth B. Shepard, dated February 22, 1983, incorporated in several of the various briefs in the courts below, and duplicated in Appendix B, herein, for the convenience of the Court.

[10] *See,* Declaration of Kenneth B. Shepard, dated March 24, 1983, incorporated in several of the various briefs in the courts below, and duplicated in Appendix C, herein, for the convenience of the Court.

[11] Petitioner's Brief, p. 4.

[12] *See,* footnote 7, *ante.*

[13] This is the total number of Asahi valves observed in the two samplings: 246 from the February 14, 1983, sampling (See Appendix B), and 21 from the March 23, 1983, sampling (See Appendix C).

valves nor the potential for injury are miniscule. In this case alone there was one death and one catastrophic injury. As a result, possible defects may impose significant economic burdens not only on consumers, but also on companies who are intermediaries between Asahi and the ultimate consumer.

Petitioner argues that its activity amounts to no more such purposeful activity with the forum than the automobile dealer in *World-Wide Volkswagen.*[14] More specifically petitoner characterizes its relationship with the forum as nothing more than "an awareness by Asahi that some of its valves might be incorporated in products sent to California for sale."[15] This position ignores the reality of the facts and modern international trade.

Asahi's component part did not come to California by "chance" or "fortuitous circumstances."[16] Petitioner had *actual knowledge* that its product was incorporated into tire tubes and sold in California by various tube manufacturers. Rather than abating or limiting its sales to avoid exposure to suit in California, petitioner continued to profit by selling its product to such international marketers of motorcycle tire tubes as Cheng Shin, Honda, Yokohama, Bridgestone and Kenda. Asahi knowingly benefitted economically from the systematic and continued sales of its component part by these manufacturers.

Asahi provided a manufactured product to Cheng Shin, who incorporated it into a tube. Both products were

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[14] Petitioner's Brief, p. 18.

[15] Petitioner's Brief, p. 26.

[16] *World-Wide Volkswagen v. Woodson, supra,* at 295.

distributed as a unit. Asahi cannot be allowed to avoid responsibility for the quality of its product merely because Cheng Shin actually marketed the final product. To authorize such a shield would be to allow Asahi to benefit economically from a market without the burden of responsibility to the market for product defects. Such a shield effectively burdens domestic intermediaries where actual fault lies with the very entity so shielded.

This situation is distinguishable from circumstances where the component supplier provides only a primary ingredient, such as thread or cotton[17], or a raw material.[18] Such ingredient can be utilized in a wide range of applications. Under these circumstances perhaps the ingredient supplier cannot reasonably anticipate every use of its product or its eventual destination.

Respondent admits that petitioner had no *direct* contacts with California. However, this Court has succinctly stated:

> "... if the sale of a product of a manufacturer or distributor ... is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly *or indirectly*, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or others." (Emphasis added.)

(*World-Wide Volkswagen, supra*, at 297.)[19]

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[17] *See, Nelson v. Park Ind., Inc., supra.*

[18] *See,* Brief for Cassiar Mining Corporation as Amicus Curiae in Support of the Petitioner, filed in this matter.

[19] Accord, *Nelson, supra,* at 1126; *Oswalt, supra,* at 200; *Sells v. Int'l Harvester Co., Inc.,* 513 F.2d 762, 763 (5th Cir. 1975);

(Continued on following page)

It is undisputed that Asahi benefitted economically and materially from the marketing efforts of Cheng Shin and others in California. This benefit was admittedly indirect, yet was very real as evidenced by the number of Asahi valves found in California. Therefore, petitioner could reasonably anticipate being haled into court in California. It is only reasonable that Asahi should be amenable to suit in the very jurisdiction where its product is knowingly marketed, ultimately fails and causes injury.

2. Petitioner Purposefully Entered the Stream of Commerce

Petitioner argues that the so-called "Stream of Commerce Theory" of exercising jurisdiction is inapplicable because it did *not* attempt to insulate itself nor did it have an indirect marketing scheme designed to avoid California jurisdiction.[20] However, as this Court has stated:

> "The forum State does not exceed its powers under the due process clause if it asserts personal jurisdiction over a corporation that delivers its products into

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(Continued from previous page)

Coulter v. Sears, Roebuck and Co., 426 F.2d 1315, 1318 (5th Cir. 1970); *Duple Motor Bodies, Ltd. v. Hollingsworth,* 417 F.2d 231, 235 (9th Cir. 1969); *Rockwell, supra,* at 332-333; *Keckler v. Brookwood Country Club,* 248 F.Supp. 645, 649-650 (1965); *Gray v. American Radiator & Standard Sanitary Corp., supra.* Courts have also exercised jurisdiction without requiring the defendant to have knowledge of where his product is going. *Bean Dredging Corp. v. Dredge Tech. Corp.,* 744 F.2d 1081 (5th Cir. 1984); *Bach v. McDonnell Douglas, Inc.,* 468 F.Supp. 521, 526 (1979); *Novinger, supra,* at 593.

[20] Petitioner's Brief, pp. 20-22.

the stream of commerce with the expectation that they will be purchased by consumers in the forum State." (*World-Wide Volkswagen, supra,* at 297-298, citing *Gray v. American Radiator & Standard Sanitary Corp., supra.*)

In *Gray,* it was held that Illinois had jurisdiction over a foreign corporation which did no business in Illinois. The Court reasoned that because use of the corporation's product in Illinois was not isolated and that there existed a "reasonable inference" that there was substantial use and consumption of the defendant's product in Illinois, defendant benefitted from the laws of the state. (*Gray, supra,* at 766.) Furthermore, jurisdiction was proper because:

> "With the increasing specialization of commercial activity and the growing interdependence of business enterprises, it is seldom that a manufacturer deals directly with consumers in other States. The fact that the benefit he derives from its laws is an indirect one, however, does not make it any less essential to the conduct of his business; and it is not unreasonable, where a cause of action arises from alleged defects in his product, to say that the use of such products in the ordinary course of commerce is sufficient contact with this state to justify a requirement that he defend here." (*Ibid.*)

Petitioner argues that this Court, in *World-Wide Volkswagen, supra,* intended the "stream of commerce" theory to apply only after the element of "purposefully availing oneself of the privilege of conducting activities in the forum State" is satisfied.[21] Petitioner misinterprets

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[21] Petitioner's Brief, pp. 20-21.

the Court's intent. The "stream of commerce" language is a description of activity which satisfies the "purposefullness" requirement. (*World-Wide Volkswagen, supra,* at 297-298.) Petitioner cites *Eschmann Bros. & Walsh, Ltd. v. Mueller & Co.,* 444 U.S. 1063 (1980) in support of its position.[22] However, the lower court's reconsideration upon remand did not necessarily reflect this Court's intended result, since the Court of Appeal did not sufficiently explain the reasoning behind affirming the trial court's decision in light of *World-Wide Volkswagen.* For this reason, the *Eschmann Bros.* case cannot be considered controlling under the facts here. Therefore, it is apparent that the stream of commerce theory is applicable to this case.

In applying the stream of commerce theory, this Court has distinguished a local retailer or distributor from a major manufacturer or distributor (*World-Wide Volkswagen, supra,* at 297-298.) Thus, when a manufacturer places its products in the stream of commerce of the United States, it is generally recognized, except for small local manufacturers who distribute products only in a small area, that the products will be marketed throughout the country. It is reasonable to assume that a manufacturer may be held liable in any state where its products are sold, even though it sells its products through independent distributors over which it exercises little or no control.

Applying the reasoning of *World-Wide Volkswagen* and *Gray* to the instant case, it is evident that petitioner

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[22] Petitioner's Brief, pp. 19-20.

is subject to the jurisdiction of California pursuant to the stream of commerce theory. As in *Gray,* petitioner's contacts with California cannot be characterized as isolated occurrences. Petitioner not only sold its tire valves to Cheng Shin, which it knew made extensive sales in California, petitioner also sold its product to several other worldwide marketers. Moreover, from these transactions it can be reasonably inferred that there was substantial use and consumption of petitioner's product in California, from which petitioner knowingly benefitted economically. As with the foreign corporation in *Gray,* petitioner has derived and enjoyed the benefits and protections of the laws of California insofar as petitioner has been directly affected by the transactions of its products in California. (*See, Gray, supra,* at 766, and *Hanson v. Denckla, supra,* at 253.) In addition, petitioner has enjoyed the benefits and protections of the laws of California simply by being allowed the accessibility to the California market for its valves.

Petitioner's argument relies on the assertion that since it has neither attempted to insulate itself nor used an indirect marketing scheme to avoid jurisdiction, it is not subject to jurisdiction under the stream of commerce theory.[23] Analysis of the facts betrays petitioner's theory. By selling its product to such worldwide marketers as Cheng Shin, Honda and Bridgestone, which it knows makes substantial sales in the United States and California, petitioner has, in effect, attempted to insulate itself from the jurisdiction of every state it indirectly serves, despite the

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[23] Petitioner's Brief, pp. 20-22.

extensive use of its valves. The result could be that if any one of these valves is defective, an injured consumer would be precluded from seeking redress against the petitioner unless he or she is willing and able to bring suit in Japan. By maintaining this marketing scheme of selling to foreign marketers, petitioner has effectively precluded liability to the American consumer for any injuries caused by its defective product.[24]

The practice of insulating oneself from a jurisdiction by way of dealing indirectly within that forum should not be permitted, especially where, as here, the very nature of Asahi's business as a component part manufacturer is to depend on others to directly deal with the market. This practice virtually shields Asahi from liability for injuries caused by defects in its products, though it is able to knowingly reap the economic benefits from the forum.

In short, through the utilization of this distribution system, petitioner has developed, or taken advantage of, a marketing scheme in a manner effectively insulating it from the jurisdiction of any of the United States, including California, despite the widespread use of its product throughout this country. The result is that petitioner has

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[24] In *Bach v. McDonnell Douglas, Inc., supra,* jurisdiction was exercised over Martin-Baker, an English manufacturer of airplane ejector seats. In so ruling, the District Court observed that "(a)ssuming that Martin-Baker does not 'do business' in California, it appears that no United States District Court in that state would have *venue*. Perhaps it is possible for this matter to be litigated in England. However, the expense and inconvenience caused by trial of a case thousands of miles from the site of take-off, accident, and plaintiff's residence, offends the notion of fairness and makes the Court unwilling to rule out an Arizona forum simply because of the possible alternative of an English forum." (Emphasis added.) (*Id.,* at 527.)

placed its product into the stream of commerce with the expectation and knowledge that it would benefit economically from the marketing of its product by others. Asahi's efforts to indirectly serve and benefit from the California marketplace renders jurisdiction proper and appropriate in that state.

C. It Is Fair and Reasonable for California to Exercise Jurisdiction Over Petitioner

Petitioner asserts that it is not fair and reasonable for it to be subjected to California jurisdiction.[25] Its argument is premised on the allegation that the Supreme Court of California improperly found a California state interest in this action. Petitioner argues that the Court first assumed that California had personal jurisdiction over petitioner in order to determine choice of law. Then, petitioner argues the Court used choice of law to determine that exercise of jurisdiction was proper.

As the Supreme Court of California correctly points out, having determined that a defendant has sufficient minimum contacts with the forum state, the next determination is whether it is fair and reasonable to subject that defendant to the jurisdiction of the forum state.

> "The court must balance the 'inconvenience to the defendant in having to defend itself in the forum state against both the interest of the public in suing locally and the inter-related interest of the state in assuming jurisdiction.'" (*Asahi Metal Industry Co., Ltd. v. Superior Court, supra,* at 52.)[26]

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[25] Petitioner's Brief, pp. 24-25.

[26] *See,* Pet. App. C-15.

The Court states three reasons for its determination that it is fair and reasonable to exercise jurisdiction over petitioner.

> "First, California has a strong interest in protecting its consumers by ensuring that foreign manufacturers comply with the state's safety standards." (*Asahi, supra,* at 53.)[27]

The Court hereby recognizes that if California cannot exercise personal jurisdiction over petitioner, California leaves its consumers without redress against foreign manufacturers whose defective products have caused injuries within California. Again, it is uncontroverted that petitioner's product has regularly entered California. Thus, many California citizens are subject to potential injury and death from defective valves manufactured by the petitioner. If California is unable to exercise jurisdiction over petitioner, an injured plaintiff's only remedy lies in the courts of Japan.[28] Similarly, California distributors and retailers who may be totally without fault are subject to liability unless they are able to seek relief overseas. Certainly, it is more burdensome for an injured plaintiff or a domestic distributor or retailer to bring suit in Japan than it is for petitioner to defend in California. This is certainly true when the accident occurs in the forum and all witnesses are located in the forum.

Moreover, if petitioner is not subject to California jurisdiction, then it logically follows that no state could constitutionally subject petitioner to its jurisdiction for

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[27] *See,* Pet. App. C-16.

[28] *See,* Footnote 24, *ante.*

injuries caused by petitioner's defective product despite the continued use of petitioner's product throughout the United States. Thus, anyone injured by petitioner's product in the United States would be forced to litigate in Japan to seek their remedies.[29]

The California Supreme Court's second and third reasons for finding it fair and reasonable to subject petitioner to California jurisdiction disclose the interest California has in the orderly administration of its laws and in avoiding the possibility of inconsistent verdicts. (*Asahi, supra,* at 53.)[30] Here there are multiple defendants. Although the original plaintiff is no longer involved, two other suits for indemnity arising out of these same circumstances still exist against petitioner. It should be specifically noted that respondent's subsidiary corporation, Cheng Shin USA, was a defendant in the base action and is a California corporation. Since these other suits are brought by California corporations, it is apparent that California still maintains a substantial interest in this suit despite plaintiff's absence.

Irrespective of the foregoing, petitioner attempts to characterize this matter as one arising in contract. The underlying tort case requires virtually identical litigation, including testimony by percipient and expert witnesses. Thus, the attempted distinction is without merit.

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[29] *See, Jay, "Minimum Contacts" As A Unified Theory of Personal Jurisdiction: A Reappraisal,* 59 N.C.L. Rev. 429, 446-448 (1981); *Volvo of America Corp. v. Wells,* 551 S.W.2d 826, 828 (C.A. KY 1977).

[30] *See,* Pet. App. C-16.

Thus, California's interest in avoiding a multiplicity of suits and inconsistent verdicts is further indication that it is fair and reasonable to subject the petitioner to the jurisdiction of California, especially with regard to a matter which not only occurred in California, but which also involves numerous California parties.[31]

Finally, as the Supreme Court of California points out, petitioner has failed to present any evidence showing that it would be inconvenienced by litigating this matter in California.[32] Certainly, as a practical matter, in these modern times when it is common for insurance companies to provide a defense by way of hiring attorneys who are located worldwide, and during which modern communication technology allows for virtually instantaneous contact regardless of distance, the inconvenience involved to an international manufacturing concern does not begin to compare with the inconvenience to the local plaintiff where the case has to be tried overseas.

Here, the California Supreme Court properly determined that it was fair and reasonable for California to exercise jurisdiction over petitioner.

D. California's Exercise of Jurisdiction Over Petitioner Is Not Based on the Unilateral Activity of Others

Petitioner argues that it is not subject to the jurisdiction of California because its product entered this coun-

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[31] *See, Sells, v. Int'l Harvester Co., supra,* in which the Court exercised jurisdiction over a fan blade manufacturer based on exactly the same procedural facts as those involved in this suit.

[32] *See,* Pet. App. C-17.

try through the unilateral activity of Cheng Shin,[33] In *Hanson v. Denckla, supra,* at 253, the Court states that

> ". . . unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." (*See* also, *World-Wide Volkswagen, supra,* at 298 and *Burger King Corp. v. Rudzewicz, supra,* at 542.)

The Court goes on to state:

> "The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." (*Hanson v. Denckla, supra,* at 353.)

The facts of this case indicate that petitioner, by the the quality and nature of its conduct and activities has purposefully availed itself of the protection and benefits of California law (*See,* Section I.B.1. and Section I.B.2., *ante*). That petitioner did not deal directly with the California market place does not camouflage the fact that petitioner, when it sold its product to Cheng Shin, knew that its product would be sold in the United States, including California.

Despite the fact that it only indirectly served the California market place, petitioner has nonetheless engaged in economic activity and knowingly benefitted from the marketing efforts of others in the United States and California. Thus, petitioner has purposefully availed itself of the protections and benefits of California law and is

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[33] Petitioner's Brief, p. 23.

therefore properly subject to California jurisdiction (*Hanson v. Denckla, supra,* at 253; *Gray v. Am. Radiator & Std. Sanitary Corp., supra,* at 766.)[34]

E. Conclusion

Based on the foregoing, it is manifestly clear that California's exercise of jurisdiction over petitioner is consistent with the requirements of due process as set forth in *International Shoe Company v. Washington, supra,* and its progeny. Therefore, respondent respectfully submits that this Court should affirm the decision of the Supreme Court of California.

II

THE INTERNATIONAL CONSEQUENCES IN FINDING JURISDICTION OVER PETITIONER ARE NOT UNREASONABLE

A. A Competitive Edge Must Not Be Given to Foreign Manufacturers

American manufacturers must include in the cost of their goods the expenses associated with potential liability under products liability legislation and case law. Those domestic companies whose products are sold throughout the United States are subject to lawsuits in virtually every state. If foreign manufacturers of component parts are not subject to this same jurisdictional liability, a significant competitive advantage will be obtained over domestic manufacturers, in addition to the advantages that might already be conferred by less restrictive national laws gov-

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[34] *See* also, discussion under Sections I.B.1. and 2., *ante.*

erning workplace safety and health, environmental obligations, wages and marketing limitations.

The likely deleterious effect of shielding foreign manufacturers of component parts from jurisdiction in products liability cases will further hinder the domestic manufacturer already struggling to compete with foreign competition. Domestic companies not actually at fault for defects in foreign-made components will have to bear the financial burden, either directly or by the ever-increasing cost of insurance, for derivative liability.

B. International Trade and Relations Will Not Suffer Significantly

Petitioner has indicated that assertion of international power over foreign corporations must be respectful of the conservative and reasonable views of national power which are current among others in our international community.[35] Respondent respectfully suggests that:

1. As a leader of the international economic and commercial community, those who trade with the United States expect international change in commercial respects to be instituted by the United States, as opposed to other nations;

2. For the purposes of this particular matter, the enormous amount of international trade between the United States and Japan, combined with significant effort by both countries to expand this trade further, suggests that an artificial "international boundary" shield as to liability for defective products is inappropriate and unreasonable. Japan is California's number one foreign trade partner, and California is

[35] Petitioner's Brief, pp. 14-15.

Japan's number one trade partner, after the United States itself;[36]

3. Those actually at fault for the creation of a defective product should, in all fairness, answer to those injured thereby. Those injured include passively, vicariously or derivatively responsible domestic links in the stream of commerce.

CONCLUSION

There is a very real necessity in today's commercial world to hold accountable those foreign manufacturers who flood our markets with their goods. The fact that the foreign manufacturer benefits indirectly rather than directly is no justification for insulating those whose products are defective.

For all of the foregoing reasons, respondent respectfully submits that the decision of the Supreme Court of California should be affirmed.

Respectfully submitted,

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Attorney for Respondent

[36] *See*, Tatsuo Arima (Consul General of Japan in San Francisco), "On Trade With Japan," *The Business Journal, Serving Greater Sacramento*, Vol. 2, No. 49, p. 5, Week of March 10, 1986 (address: *The Business Journal*, 2030 J Street, Sacramento, California 95814, telephone: (916) 447-7661.) (Reproduced herein, Appendix D.)

APPENDIX A

DECLARATION OF HWALLY CHEN

I, HWALLY CHEN, declare as follows:

I am a manager in the employ of CHENG SHIN RUBBER INDUSTRIAL COMPANY., LTD., hereafter referred to as "Company". In my position with this Company my duties and responsibilities include the purchasing of component parts for items manufactured and assembled by Company. In this capacity I am eminently familiar with the marketplace and dealings in the industry. I have purchased tire tube valve assemblies from different suppliers including ASAHI METAL INDUSTRY COMPANY., LTD.

I am familiar with the ASAHI METAL INDUSTRY COMPANY, LTD., tire tube valve assembly. This product can be identified as ASAHI's by the logo on the product, which is a capital "A" enclosed by a circle.

I am aware that ASAHI METAL INDUSTRY COMPANY, LTD., is a major manufacturer of tire tube valve assemblies. These assemblies are supplied with the metal valve stem glued or attached to an oval rubber base. My company incorporates these assemblies into tubes.

I am aware and it is general knowledge throughout the industry that ASAHI is one of the big Japanese producers of these assemblies. Their customers include Bridgestone, Yokohama and IRC, all of which supply tubes to the major cycle manufacturers. These companies also sell replacement tubes.

In 1978, my Company purchased and incorporated 150,000 ASAHI valve stem assemblies into tire tubes.

In 1979, my Company purchased and incorporated 500,000 ASAHI valve stem assemblies into tire tubes.

In 1980 my Company purchased and incorporated 500,000 ASAHI valve stem assemblies into tire tubes.

In 1981 and 1982 my Company purchased and incorporated 100,000 ASAHI valve stem assemblies into tire tubes.

In discussions with ASAHI regarding the purchase of valve stem assemblies the fact that my Company sells tubes throughout the world and specifically the United States has been discussed. I am informed and believe that ASAHI was fully aware that valve stem assemblies sold to my Company and to others would end up throughout the United States and in California.

Approximately twenty percent of the CHENG SHIN tire tubes sold in the United States are sent into California. The fact that the plaintiff in this action had an ASAHI valve stem assembly in his tire tube was not an isolated incident as I am informed and believe and thereupon state that there must be and have been numerous, perhaps thousands, such assemblies in use on the roads of California currently and over the years.

I declare under penalty of perjury that the foregoing is true and correct, except as to those matters stated upon information and belief which I believe to be true.

Executed this 4th day of March, 1983 in Los Angeles, California.

/s/ Hwally Chen

APPENDIX B

DECLARATION OF KENNETH B. SHEPARD

I, KENNETH B. SHEPARD, declare as follows:

That I am an attorney licensed to practice law before all the courts of the State of California and I am a member of the law partnership of SHEPARD AND HAVEN, the attorneys of record for CHENG SHIN TIRE USA, INC., and CHEN [*sic*] SHIN RUBBER IND. CO. LTD., defendants and cross-complainants herein.

That on February 14, 1983, I went to HAHN CYCLE SUPPLY CO., INC. at 8601 23rd Avenue, Sacramento, California, where I met with Jimmy Sun, an employee of HAHN CYCLE SUPPLY CO., INC. While at that facility, I personally inspected numerous motorcycle tire tubes in packages bearing the names of various motorcycle tire tube manufacturers, including but not limited to "Kenda" and Cheng Shin. My specific purpose in so doing was to determine which tubes had a stamped, circled "A" in the rubberlike material at the base of the metal valve stem.

I observed the following sizes and numbers of Kenda brand motorcycle tire tubes with the circled letter "A" at or near the base of the valve stem:

96 tire tube size 250/275X16;
35 tire tube size 275/300X15;
27 tire tube size 350/400X19;
47 tire tube size 325/350X21;
41 tire tube size 325/350X16.

There were unopened cases of tire tubes at HAHN CYCLE SUPPLY CO., INC., which I did not examine.

I purchased two Kenda tire tubes from HAHN on February 14, 1983. One is described as a motorcyle tire

tube size 275/300X16 and the other is described as a motorcycle tire tube size 250/275X16. Both tubes have a circled "A" near the base of the valve stem. HAHN CYCLE SUPPLY CO., INC., invoice number 82330 is attached hereto as Exhibit "A" and incorporated herein by reference as proof of purchase. Both tire tubes are in the possession of SHEPARD AND HAVEN.

If sworn as a witness, I could competently testify to the above-stated facts which are within my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

DATED February 22, 1983, at Sacramento, California.

/s/ Kenneth B. Shepard

APPENDIX C

DECLARATION OF KENNETH B. SHEPARD

I, KENNTH B. SHEPARD, declare as follows:

That I am an attorney licensed to practice law before all the courts of the State of California and I am a member of the law partnership of SHEPARD AND HAVEN, the attorneys of record for CHENG SHIN TIRE USA, INC., and CHENG SHIN RUBBER IND. CO. LTD. defendants and cross-complainants herein.

That on March 23, 1983, I went to STERLING MAY COMPANY, INC., 291 West Main Street, Woodland, California, where I met with Mike Dobrin of the law firm of Duncan, Ball, Evans and Ubalde and an employee of STERLING MAY COMPANY, INC., whose first name was Bob.

While at STERLING MAY COMPANY, INC., I observed ninety-seven (97) new motorcycle tire tubes which purportedly were manufactured in either Japan or Taiwan. There were not more than twenty (20) other tubes, some of which indicated they were manufactured in the United States, and the others were manufactured in Europe.

The ninety-seven (97) tire tubes inspected listed by brand name and/or importers names are as follows:

Name	Number
Yokohoma	2
Beck Arnley	1
Cheng Shin	53
Honda	3
Kenda	1

Best (IRC)	17
HFR	12
Rocky	5
Nankang	3
Total:	97

I personally observed the following sizes, numbers and brands of motorcycle tire tubes with the circled letter "A" at or near the base of the valve stem.

1—Kenda size 350/400-8
1—Best Nankang Rubber Tire Corp. Ltd. size 2.50/2.75X15
3—Nankang Rubber Tire Corp. Ltd. size 2.00/2.25-14
2—Cheng Shin 2.25/2.50-14
8—Cheng Shin 3.25/3.50-17
2—Cheng Shin 3.00/3.25-17
2—Rocky 2.75/3.00-16
1—Beck/Arnley 4.25/4.50-17
1—Honda 2.50/2.75-10

My specific purpose in conducting the inspection was to determine which tube [*sic*] had a stamped circled "A" in the rubber-like material at or near the base of the metal valve stem. Out of the ninety-seven (97) tire tubes inspected, twenty-one (21) tubes or twenty-two percent (22%) were so marked.

I purchased three (3) motorcycle tire tubes from STERLING MAY COMPANY on March 23, 1983, each of which has the stamped circled "A" at or near the base of the valve stem. One is a CHENG SHIN size 2.25/250-14; one is a Rocky, heavy duty motorcycle tube distributed by

Rocky Cycle Company, Inc., whose address is Sunnyvale, California 94086, size 2.75/3.00-16. The third tire tube is a Honda, manufactured in Japan and is size 2.50/2.75-10. All three tire tubes are in the possession of SHEPARD AND HAVEN.

STERLING MAY COMPANY, INC.'s Invoice No. 2994 is attached hereto as Exhibit "A" to this declaration as proof of purchase.

If sworn as a witness I can competently testify to the above-stated facts which are within my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Dated March 24, 1983, at Sacramento, California.

/s/ Kenneth B. Shepard

Japan Week in Sacramento to provide an opening of the Pacific Rim's doors

As we near the 21st century, the relationship between Japan and the United States — two major Pacific Rim economies — becomes more important than ever. The course of relations between our two countries, responsible for over a third of world trade, has ramifications beyond our own borders.

ON TRADE WITH JAPAN

Tatsuo Arima

Since 1983, the government of Japan has sponsored Japan Week in chosen cities in the United States to highlight the mutual benefit of our bilateral ties and to strengthen our relations.

We have asked Sacramento to let us hold Japan Week here from March 10 through March 16 in recognition of the unusually strong historical, cultural and trade ties we share.

California's economic strength is vital to the U.S. economy and to Japan-U.S. relations. Gov. George Deukmejian recently called California "America's leadership state" in industries such as agriculture, aerospace, technology and others.

As California's No. 1 foreign trade partner, Japan plays an important role in this state. In 1984, 34.4 percent of California's foreign trade was carried out with the Japanese. Also, after the United States itself, California is Japan's number one trade partner.

California is building for a competitive economic future, and Japan is actively participating in this process. This state attracts over one-third of all Japanese-related investments in the United States. Considerably more than 500 Japan-affiliated firms create more than 60,000 jobs for Californians, with 26,000 jobs in the manufacturing sector alone. California also benefits from Japanese technological and management investments in vital industries.

Japan has brought its technological innovation and managerial know-how here. The Nummi automotive plant in Fremont, a joint venture between GM and Toyota, is one example of this.

Given the magnitude of California-Japan relations, it is natural that all is not necessarily well. Disagreement and misunderstanding exist in the area of trade. The problems are complex, and the technicalities require commitment by both the United States and Japan.

Japan is working to sustain the free-trade system in the world. Its markets are already open, but we are also working hard to facilitate exports to Japan by holding import fairs in Japan to promote American products.

Despite Japan's efforts, misconceptions among Americans persist. They adversely affect our efforts to solve trade problems between Japan and the United States in a constructive manner.

For example, there is a common assumption that Japan has a closed market to American agricultural products. In fact, Japan buys $6.8 billion worth of U.S. agricultural products, $1.6 billion from California alone.

Realizing the importance of the United States, particularly California, Japan is making a determined effort to dispel these misconceptions and to strengthen our relations.

Throughout Japan Week, lectures, seminars, performances and demonstrations covering numerous aspects of Japan and its trade relations with this country will provide cultural, educational and business-related activites for everyone.

Speakers highlighting Japan Week will include government leaders, artists and such internationally renowned business leaders as Akio Morita, chairman of Sony.

Seminars will be held on gaining access to Japanese markets in electronics and telecommunications. The Japanese community in Sacramento also will host an evening of traditional Japanese performing arts hosted by KCRA TV-Channel 3's Sydnie Kohara.

Events will be held at the Sacramento Community Convention Center, California State University, Sacramento, and elsewhere. For a schedule, call the Japanese Consulate at (415) 921-8000. I urge everyone in Sacramento to take advantage of this opportunity to learn about Japan, California's number one overseas Pacific Rim partner.

Tatsuo Arima is Consul General of Japan in San Francisco.